

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
April 9, 2001

In Reply Refer To:
1800B3-GDG

Harold K. McCombs, Jr., Esq.
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2101 L Street, NW
Washington, D.C. 20037-1526

In re: WGNV(AM), Newburgh, NY
Facility No. 63942
File No. BP-19980128AB

Dear Mr. McCombs:

This letter concerns your December 15, 2000 and February 22, 2001 notifications on behalf of Sunrise Broadcasting of New York, Inc. ("Sunrise") that the referenced construction permit be treated pursuant to the tolling provisions of 47 C.F.R. §73.3598(b)(ii). We grant tolling based on your first request, but deny the further tolling sought in your second request.

The referenced permit to modify the existing facilities of WGNV(AM) was initially granted November 16, 1998, and expires November 16, 2001. On December 15, 2000, Sunrise notified the staff that the subject permit was encumbered, pursuant to the *Report and Order* in MM Docket 98-43 ("*Streamlining R&O*"), 13 FCC Rcd 23056, 23091 (1998), *recons. granted in part and denied in part* 14 FCC Rcd 17525 (1999), between December 15, 1999 and September 15, 2000 by the Supreme Court of New York for Orange County's judicial review of the zoning of its permitted tower site.

Although we are granting this request, we caution Sunrise that such requests for treatment pursuant to the Commission's tolling rules, 47 C.F.R. §73.3598(c), generally must be filed within 30 days of the claimed event. This timing is for the applicant's benefit. Applicants failing to comply with this rule may have difficulty documenting the event and place themselves at risk of learning of a potential denial of tolling after their authorization already expired.

Sunrise's February 22, 2001 notification involves a new judicial review by the Supreme Court of the State of New York, County of Orange. The new case concerns the Newburgh Zoning Board of Appeals' ("NZB") refusal to renew the Sunrise's special use permit. That permit was needed to allow WGNV to operate at the Darrigo Farm tower site pursuant to a special temporary authority that we granted, allowing the existing station to remain operational. Sunrise alleges that this matter is associated with its attempt to construct its permanent Rock Cut Road facilities because the objecting party in that proceeding influenced NZB's decision in this matter. The Commission's rules, 47 C.F.R.

§73.3598, limit tolling considerations to judicial appeals of the grant of a construction permit and to delay of construction by court cases relating to zoning that is required to construct or operate the station pursuant to that construction permit. No such matter is at issue concerning the Rock Cut Road site, as the new court case involves a different authorization related to the station's temporary existing facilities at Darrigo Farm. Sunrise offers no substantial evidence that this new judicial matter will in any manner impede progress towards completing the authorized permanent facilities. Accordingly, we reject this additional request for treatment pursuant to our tolling rules.

Accordingly, Sunrise's December 15, 2000 request for tolling of the Commission's construction period rules, 47 C.F.R. §73.3598(a), IS GRANTED and its February 22, 2001 request for additional tolling IS DENIED. The Commission's records ARE HEREBY REVISED to require Sunrise to complete construction pursuant to the referenced permit and file the appropriate license application no later than August 17, 2002.¹

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

¹We calculated this date by recognizing that the referenced permit was unencumbered between November 16, 1998 and December 14, 1999, *i.e.*, for 12 months/28 days. An additional 23 months/2 day period is needed for WGNV(AM) to receive a full three years pursuant to 47 C.F.R. §73.3598(a). Therefore, we added that period to the September 15, 2000 finality date of the Court proceeding, *i.e.*, August 17, 2002.